

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20210
Docket Number MW-20237

Joseph **Lazar**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood that:

(1) The suspension of nine (9) days imposed upon Working 'For- G. H. **Kruschek** and Station Maintainer T. P. Foreman was **improper**, without just and sufficient cause and based upon unproven charges (System File **MW-3.72.30**).

(2) The personal record of the claimants be cleared of said suspension and reimbursement be made for wage loss suffered all in accordance with Rule 22.

OPINION OF BOARD: The Carrier suspended Claimants from service for a period of nine working days on the charge of "unauthorized entry into private property." The circumstances were these: Certain doors at the Union Station were normally locked. The keys **therefor** were in the custody of and for the sole use of the Carrier's security forces. When the Carrier's station maintainers required access through one of these locked doors, it was necessary for them to call a security officer to unlock the door. One of such doors was the entrance to elevator pit 64 which also served as the entrance to the Lower Level of a restaurant, The Landmark Colony, Inc., housed within the Union Station, but not a part of the Union Station and deemed to be "private property". During Claimant's regular tour of duty on March 23, 1972, at approximately 3:00 A.M., they noticed that the door to elevator 64 pit was unlocked and that the lights were on. They regarded this unusual condition as suspicious, calling for an **immediate** investigation. They went through the unlocked door, found nothing amiss on the lower level, heard people at work on the upper level whom they presumed to be restaurant employees, concluded that everything was in order, and left, locking the door behind them. The dock area of the restaurant was checked to confirm the presumption that restaurant employees were still working, and concluding that nothing was amiss, routine work was resumed.

Careful review of the record shows that the elevator pit 64 entrance was not marked "private property" and that there were no instructions by the Carrier forbidding its employees the use of this entrance. **More** to the point, the record shows no instructions to the

employees concerning what they must or must not do in the event of finding an unlocked door, with lights on, at approximately 3:00 A.M., giving **réasonable** rise for suspicion.

Under the unusual and suspicious circumstances of this particular case, it is unnecessary to conclude that the Claimants acted reasonably and **commendably** to safeguard the interests of the Carrier, or to conclude that the Carrier's concern for the safety of Claimants in a possibly dangerous situation was well-warranted. It is sufficient, on a careful review of the record before us, to find that there is a lack of evidence to support the discipline.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employes** involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulson*
Executive Secretary

Dated at Chicago, Illinois, this 11th day of April 1974.